

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 08.11.2018

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

+W.P(MD)No.17691 of 2018
and
W.M.P(MD)No.15577 of 2018

#1.Ramayie

2.Thangamani

3.Sakthivel

4.Sanmugam ..Petitioners

Vs

\$1.The District Collector,
Karur,
Karur District.

2.The Tahsildar,
Karur,
Karur District.
..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Mandamus forbearing the respondents to
have the access to their agricultural land comprised in S.No.826/1, 826/2 and
826/3, through S.No.823 in Thanthoni Village, Karur and not to put up any
construction without following due process of law.

!For Petitioners :Mr.L.Velpradeep
^For Respondents :Mr.S,Dhayalan,
Government Advocate.

:ORDER

The Petitioners have sought for a Writ of Mandamus forbearing the
respondents to have the access to their agricultural land comprised in
S.No.826/1, 826/2 and 826/3, through S.No.823 in Thanthoni Village, Karur
and not to put up any construction without following due process of law.

2.The case of the Petitioner is that the property in S.No.825,
measuring an extent of 3.47 acres belong to one Appa Naicker, which was sold

to three persons by registered sale deeds on 23.09.1947. The said persons have partitioned the property and as such, the Petitioners- father Raman was allotted 1/3rd share of the said portion which was to an extent of 1.16 acres. As the legal heirs of the said Raman, the Petitioners inherited 1.16 acres and were in joint possession and enjoyment of the said property and had purchased various extent of lands from third parties and now holding A.C196~ 1/2 in total and the adjacent lands have been sold by the co~sharers to third parties. Further, there is a State Highway leading east to west at the northern side of the Petitioners- property, which leads to Karur to Aamur. 0.03.5 ares of land comprised in S.No.823 is situated between the Petitioners land and the said State Highway. The said land belongs to the Government, classified as --Government Poramboke-- as per the revenue records and the other three boundaries are bound by the lands belonging to individual persons. The Petitioners and others are using the northern side of the land to have free access to reach the State High way road for a long period without any interruption. The Petitioners would further contend that in the year 2015, there was a proposal to put up construction in the said land by the Government in the north of the suit property which is situated in between the petitioners land and the State Highway. Hence, the Petitioners will be deprived their right of free access to the State Highway. Hence the Petitioners have filed O.S.No.553 of 2015 on the file of the Principal District Munsif Court, Karur seeking the relief of permanent injunction on the ground of prescription and easement of necessity and not to interfere with the peaceful usage of free access. On 10.12.2015, the Court below has set the respondents ex~parte for not filing written statement and the suit was decreed ex~parte in favour of the Petitioners and till date the said decree is not set aside.

3.The Petitioners would further contend that the respondents are trying to put up pucca construction in the said land stating that the said land was allotted and transferred to construct the Office Building for Q~ Branch CID Police. Since the entire land which has been used by the Petitioners to reach the State Highway, has been allotted to the said Department, the Petitioners would be put to irreparable loss if any construction is put up by the said Department. They also further contend that suit decree stand in their favour and without hearing them and leading a path to reach the main road, the respondents should not put up any construction.

4.The second respondent has filed a counter stating that the Writ Petition is not at all maintainable since the respondents have right to put up any construction in the said land, as the said land has been allotted to them. The respondents would further contend that no document was produced by the Petitioners to prove that they are performing agricultural operations in the above said survey numbers and only S.No.823 is the only access to reach the East~West State Highways Road. The exparte decree passed by the Principal District Munsif Court has not been challenged so far and they are ready to challenge the same and they are taking necessary steps for the same. The Petitioners prayer directing the respondents not to put up any construction cannot be maintained, since they have already taken necessary steps like getting the land developed for the purpose of building

construction. The respondents would further submit that the said land is a Vandipathai Poramboke measuring an extent of 1.16.50 Hectares equivalent to 2.87 acres of land, in which, a small portion of land measuring an extent of 15 cents was allotted to the Q Branch CID Police for construction of their office building by the proceedings of the District Collector, Karur in S.No.823. The said building has not been constructed so far and only 15 cents of land is allotted and to be used for the said construction and the remaining 2.72 acres of land will be kept vacant and as such there will be access or pathway for the Petitioners and other general public, to use. The respondents have never had any intention to obstruct the usage of pathway to reach the Aamur State Highways Road and they have not interfered with the peaceful possession and enjoyment of the Petitioners- property by blocking the free access of the Petitioners to reach the East~West Aamur State Highways Road. The Petitioners have suppressed all these facts and filed this Writ Petition. It is further submitted that only after field inspection, the said land was allotted to the Revenue Divisional Officer, Karur and S.No.823 was modified only after following the procedures of Revenue Act and also as per law. Accordingly, A1~Advertisement Notice was issued to the general public with regard to any objections in converting/modifying the land in S.No.823 on 12.7.2018 by proceedings in Na.Ka.No.B1/12085/2014 and no objection was raised by the general public to modify the classification of the said land. Since the land falls under the jurisdiction of the Karur Municipality, a resolution was also passed to that effect by Karur Municipality to convert the said land and had issued no objection in allotting and transferring the land for construction of Office building for Q~Branch CID Police. Only after perusing the inspection reports and the recommendation of the Revenue Department and also from various other departments and after giving proper notice to the general public, the proceedings in Na.Ka.B1/12085/2014, dated 12.7.2018 has been passed by the authorities concerned. As per the decree passed by the court below, the department has not constructed any building obstructing the pathway from east to West of Emur State Highways Road from the Petitioners land holding. From the date of exparte decree, they have not interfered with the peaceful possession and enjoyment in using the said land as pathway to the Aamur State Highways and construction will be put up only in 15 cents and only after following the due process of law, the said land has been allotted to the said department. S.No.823 is classified as --Vandipathai Poramboke-- had an extent of 1.16.50 hectares equivalent to 2,87 acres of land and in that, only a small portion of 15 cents have been converted and allotted to the Q Branch CID Police and the remaining place is kept vacant for free access to the petitioners. As per the original revenue records and by verifying the title over the properties and by ascertaining the right over the property and also by verifying the property in dispute, the said land has been allotted to the Q~Branch CID Police for public purpose. Hence the respondents sought for dismissal of the Writ Petition.

5.Heard the submissions of the learned counsel appearing on either side and perused the materials place before this Court.

6.It could be seen from the decree passed by the Principal District Munsif Court, Karur, dated 6.4.2018 that it was an ex~parte decree granted by

the Court below and permanent injunction has been granted against the respondents not to disturb the peaceful possession and enjoyment of the Petitioners land. The respondents have already in their counter affidavit stated that there will not be any obstruction from them to have the free access for the Petitioners to reach the Aamur State Highway and the respondents have further submitted that only in 15 cents of land construction will be put up and they have left three sides way, it is for the respondents to ear~mark a separate area as pathway for free access to the Petitioners and others who are residing in that area.

7. That apart the respondents, till date, have not challenged the judgment and decree passed in O.S.No.553 of 2016, on the file of the Principal District Munsif Court, Kartur and it still holds good for permanent injunction.

8. The respondents have not produced any piece of material to show that they had given reasonable opportunity to the Petitioner and others while converting the said land for allotment to Police Department.

9.This Court finds that the respondents themselves had agreed that they have not obstructed the pathway used by the Petitioners and the respondents have not noted the orders of the Civil Court whether the existence of pathway used by the Petitioner are proved.

10.Since the entire land is classified as Vandipathai Poramboke, the revenue authorities are directed to surveythe said land, ear~mark and provide 15 ft pathway for the Petitioners to have free access from their lands to reach the Aamur State Highway, after affording an opportunity of hearing to the Petitioners. The entire process should be done as expeditiously as possible before commencing the construction of building by the Q~Branch CID Police Department. The District Collector, Karur is directed to pass necessary direction in this regard, to the authorities below to implement the orders of this Court.

11.The interim prayer of the Petitioners that the respondents should be prevented from putting up any construction, cannot be entertained and this Court is not inclined to pass any such order.

12.With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

To

1.The District Collector,
Karur,
Karur District.

2.The Tahsildar,
Karur,
Karur District.

